

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
v.)	Crim. No. 4-43-B-W
)	
CHELSEA ANDREWS,)	
)	
Defendant)	

**RECOMMENDED DECISION ON
MOTION TO SUPPRESS (DOCKET NO. 145)**

Chelsea Andrews was originally charged by Complaint in this matter on April 21, 2004, with possession of cocaine and conspiracy to possess cocaine. Andrews, along with two companions, was arrested, along with a fourth individual, at the bus station in Bangor, Maine. Andrews and her companions arrived in Bangor on a bus with their belongings. The fourth individual was a local resident who drove to the bus station in her vehicle to pick up Andrews and her companions. The police had a warrant to search the vehicle and its contents for drugs and evidence of drug trafficking. Chelsea Andrews has now moved to suppress (Docket No. 145) statements made during a post-arrest interview and physical evidence seized from her purse at the time of her arrest. I now recommend that the court adopt the following proposed findings of facts and deny the motion.

Proposed Findings of Fact

On April 19, 2004, at 2:05 p.m., Officer Randall A. Parsons of the Bangor Police Department obtained an “anticipatory” search warrant to search a motor vehicle operated or occupied by Theresa Mayhew. (Ex. A, Mot. to Suppress.) The triggering event, which had to occur during a twelve hour period following 1:00 p.m. on April 19, was that

Mayhew had to meet one or more individuals at the Concord Trailways Bus Terminal and transport them elsewhere. The warrant authorizing this search described the items to be seized to include, “[r]ecords such as journals, ledgers, telephone and/or address lists and other books, papers, documents, and records, all as relate to the trafficking and furnishing of drugs.” Andrews does not challenge that probable cause existed for the issuance of this search warrant.

At 10:00 p.m. on April 19, Officer Parsons was conducting surveillance at the Concord Trailways Bus Station on Union Street in Bangor as part of the anticipated execution of this search warrant. A bus arrived and most passengers departed from the bus station, leaving three Afro-Americans (two males and Andrews). Parsons believed that Mayhew would pick up two Afro-American males. At approximately 10:20 p.m., Mayhew arrived at the bus station in a vehicle. The three waiting individuals put luggage into the vehicle and got into the passenger compartment. The vehicle started toward the downtown area and Bangor police officers initiated a traffic stop of the vehicle on Maine Avenue. The occupants were removed from the vehicle, secured in a police vehicle, and Officer Parsons, with other officers, conducted a search of the vehicle. Over a pound of cocaine was found in a duffel bag in the trunk of the vehicle. (Def. Ex. 1.) Inside Andrews’s purse the officers found a driver’s license belonging to Randy Brimley.¹ The inventory prepared by Officer Parsons following the execution of the warrant did not list the driver’s license. (Mot. to Suppress Ex. B.)

¹ I did not hear any actual testimony on the seizure of the purse, because none was offered. Counsel for Andrews represented that the purse was left in the vehicle and searched after Andrews had been placed in the police vehicle. I infer this seizure and discovery of the license occurred before Andrews was interviewed at the police station. I arrive at that conclusion because the AUSA represented that the Government did not intend to offer as a part of its case in chief a pre-Miranda statement by Andrews, given in response to a question, identifying the license as belonging to her uncle. (Tr. of Hearing, 9:43:13 - 9:47:15 a.m., comments of counsel regarding the seizure of the license.)

Following her arrest Andrews was taken to the Bangor police station for an interview. Officer Parsons properly advised Andrews of her Miranda rights and Andrews indicated that she understood those rights. At all times Andrews appeared to Officers Reagan and Parsons, two of the officers present at the interview, to comprehend the words that were spoken. Officer Parsons asked Andrews, “Now, having all those rights which I just explained to you in mind, do you wish to answer questions at this time?” (Gov’t. Ex. 1.) Rather than giving a negative or positive response to that question, Andrews merely replied that she didn’t know what was going on. The officers reasonably construed that response to be an indication by Andrews that she was opting to engage in conversation with them. They then explained to her that what was “going on” had to do with her arrest for possessing over a pound of cocaine found in the trunk of the vehicle. Andrews expressed surprise that so much cocaine had been in the trunk. At no point did Andrews ask for a lawyer nor indicate that she did not want to talk with the officers. The interview was of relatively short duration lasting no more than five minutes or so. At no time was Andrews threatened, coerced, or promised anything by the officers.

Discussion

1. The Miranda Issue

Miranda warnings must be given whenever the police conduct a custodial interrogation, the custody determination being described as the “touchstone” of a Miranda inquiry. United States v. Ventura, 85 F.3d 708, 710 (1st Cir. 1996). In this case it is undisputed that Andrews was in custody and that the warnings were given. The sole issue is whether Andrews waived those rights. The government must prove that

defendant waived her right to remain silent by a preponderance of the evidence. United States v. Palmer, 203 F.3d 55, 60 (1st Cir. 2000).

Viewing this evidence in its totality I have no doubt but that Andrews understood and knowingly and intelligently waived her rights under Miranda. While it is certainly possible to “spin” Parsons’s inartful police report and the detectives’ lack of care in obtaining an express waiver as evidence that there was no waiver, such “spin” is simply not supported by the evidence. There is nothing here to suggest that Andrews’s comment about not knowing what was going on was directed at anything other than the facts of her arrest, as correctly interpreted by the officers. She did not imply by that statement that she did not understand Miranda nor that she wished to remain silent about the charges nor that she had any confusion at all about what options were available to her. She chose the option of speaking to the police in an attempt to minimize her involvement and disassociate herself from any knowledge about large scale drug trafficking.

2. The Fourth Amendment Issues

Although the Government mentioned briefly in its memorandum that the search and seizure of the purse could be justified as a search incident to arrest, (Gov’t. Resp. at 4), I do not think that justification has been developed on this record. I have therefore analyzed the issues raised by the motion as arising under the search warrant and I conclude Andrews has raised two issues: (1) whether the seizure of the driver’s license was beyond the scope of what the warrant authorized; and (2) whether the failure to list the driver’s license in the inventory has constitutional significance. Related to these issues, the Government conceded at oral argument that the driver’s license, issued to

Randy Brimley, did not develop evidentiary significance until after the police had conducted further investigation regarding this drug conspiracy.

To the extent Andrews's argument might be interpreted as suggesting this warrant lacked particularity because of an overbroad definition of the items to be seized, United States v. Dethlefs, 883 F. Supp. 766, 768 (D. Me. 1995), upheld a warrant containing similar language. The Court recognized that the nature of drug dealing permits a far greater number of documents to be seized since evidence of drug trafficking can include a significant variety of documents. The Court concluded that when a warrant clearly identified the alleged drug trafficking offenses that were the object of the investigation, the warrant provided sufficient guidance to the executing officers as to what items to seize. Id. The present warrant described the items to be seized sufficiently to preclude the exercise of unfettered discretion, or "rummaging," by the executing officer. The officers were limited to records as they related to the trafficking and furnishing of drugs. The license at issue in the present case clearly fits within the description of a document that relates to drug trafficking because it is evidence of Andrews's association with another individual, who is suspected of being a co-conspirator. It appears to me that the issue is whether or not it matters one iota that at the time the officers' seized this "document" they had little idea of its ultimate evidentiary significance and did not list it among the items seized when they returned their inventory to the court.

The question of the failure to include the license within the inventory made to the court is easily resolved. The First Circuit has held that in the absence of evidence that the officers were not acting in good faith, their failure to make an accurate return does not require suppression of evidence seized during the otherwise proper execution of a search

warrant. United States v. Dauphinee, 538 F.2d 1 (1st Cir. 1976). The various procedural steps required under rules of criminal procedure vis-à-vis the return of a warrant to a court are basically ministerial. Id. at 3. Although Dauphinee applied to a federal search warrant, there is no reason why the same principle would not apply to a state search warrant in this court. In this case there is no suggestion that the omission of the license from the inventory was anything other than inadvertence on the part of the officers.

As for the initial seizure of the license, the officers knew that they had authority under the warrant to seize documents related to drug trafficking. As Dethlefs suggests, documents that contain the identities of customers or co-conspirators might often be within the possession of drug traffickers and would be among the items officers would seek. That the warrant stated generic “documents,” and did not specify suspicious drivers’ licenses, does not make it defective. Obviously, Chelsea Andrews was not Randy Brimley and her possession of his driver’s license inside her purse would warrant a prudent officer believing that its possession by her might have evidentiary value vis-à-vis drug trafficking activities. I know of no case, and Andrews does not cite one, that stands for the proposition that an officer has to understand the full evidentiary significance of a document at the time he makes the seizure if he is operating under a warrant that supports a finding of probable cause to believe that documents of evidentiary significance might be found in the place to be searched. The seizure of this particular document is not beyond the scope of that warrant and is not evidence of wholesale “rummaging” among the personal effects of Andrews. It was a reasonable response to the unexpected discovery of an extremely suspicious document in her possession, quite possibly related to drug trafficking activities.

Conclusion

Based upon the foregoing, I recommend that the Motion to Suppress be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated January 7, 2005

Case title: USA v. DAVIS et al

Magistrate judge case number: 1:04-mj-00027-MJK Date Filed: 05/13/2004

Assigned to: JUDGE JOHN A.
WOODCOCK, JR

Defendant

CHELSEA ANDREWS (3)

represented by **JAMES S. NIXON**
GROSS, MINSKY & MOGUL,
P.A.
P.O. BOX 917
BANGOR, ME 04402-0917
207-942-4644
Email: jnixon@grossminsky.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

Disposition

NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE --
CONSPIRACY TO DISTRIBUTE
AND POSSESS WITH INTENT
TO DISTRIBUTE COCAINE -
21:846 and 841(a)(1)
(1s)

21:841A=ND.F - POSSESS
WITH INTENT TO
DISTRIBUTE COCAINE, AND
AID AND ABET - 21:841(a)(1)
and 18:2
(2s)

Highest Offense Level (Opening)

Felony

Terminated Counts

NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE
(1-2)

Disposition

**Highest Offense Level
(Terminated)**

Felony

Complaints

21:841A=ND.F - Possession with
intent to distribute cocaine (Cts. 1-
2)

Disposition

Plaintiff

USA

represented by **DANIEL J. PERRY**
OFFICE OF THE U.S.
ATTORNEY
DISTRICT OF MAINE
P.O. BOX 2460
BANGOR, ME 04402-2460
945-0344
Email: dan.perry@usdoj.gov
LEAD ATTORNEY

ATTORNEY TO BE NOTICED